CONFIDENTIAL

568
DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY [illegible] DATE 2/13/83
RDS☐or IDS☐EXT. DATE
TS AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED☐ RELEASABLE☐
RELEASE DENIED☐
PA or FOI EXEMPTIONS

DRAFT: NEA/IAI:ECubbison
X 23672

TO: P - Mr. Newsom

FROM: NEA - Harold H. Saunders

SUBJECT: Renewal of USS Liberty Negotiations

Issue: To determine the amount the U. S. Government should seek from the Government of Israel in compensation for the physical damage caused by the Israeli attack on USS Liberty during the June, 1967 war.

Background

Since the Israeli attack on the Liberty, in which 34 crewmen were killed and 164 (170? M160?) injured, allegations have periodically been made that the action was deliberate, despite the Israeli claim that the communications ship was fired upon in error. The U. S. Naval Board of Inquiry did not reach a determination of the reasons for the incident, and the Department has no information to support the various allegations put forward. In any case, the Government of Israel immediately accepted responsibility for the attack. In 1967, after negotiations, the GOI paid in full our claim for $3,323,500 ~~on behalf~~ to ~~of~~ the families of the men killed, and in 1969 the GOI paid in full our claim for $3,452,275 on behalf of the injured crewmen.

On ~~XXXX~~ July 1, 1968, the USG presented a claim for $7,494,900, estimated by the Navy to be the cost of repairs to Liberty. (Liberty was never repaired, so ~~final~~ actual costs are unavailable.) The GOI initially denied responsibility for payment of this amount, but offered to pay a nominal sum ~~XXX~~, which we ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ found unacceptable. Although for a variety of reasons we did not press our

claim between 1968 and 1978, we maintained our position. In February and May of 1978 there was an exchange of diplomatic notes in which the GOI agreed to negotiate a settlement of the ~~damage~~ claim. The opening of negotiations has been delayed subsequently, first pending the assignment to Washington of Ambassador Evron, who is the principal Israeli authority on the Liberty case and ~~a logical chief~~ a knowledgable GOI ~~interlocutor in any~~ negotiat~~ions~~ OR, and second because of our concentration on the Camp David peace process. We have also been delayed because of other pressing responsibilities in formulating a comprehensive USG negotiating position.

DECLASSIFIED

DECLASSIFIED

New Developments

We have had consultations with DOD (Navy) and Treasury this year to determine our initial and fallback positions. We have tentatively agreed with Treasury that an appropriate opening position would be one in which the USG seeks recovery of the cost of the hypothetical repairs plus the short - term cost of money to the USG for the period between July, 1968 and the time of receiving full compensation. L/C agrees that a principal - plus - interest approach has sound legal precedent, but that as a practical matter we have never succeeded in obtaining interest on an international claim in the Post World War II era. Using such a formulation, the total claim for principal and interest would be approximately $16 million. (Treasury will do a precisely - researched calculation if we agree this approach should be used.)

We believe the Israelis still hope to resolve the claim for a nominal sum. We therefore expect they will reject an opening bid on the order of $16 million, arguing that international claims are rarely settled for principal plus interest, and that their economic situatinn and high defense expenditures make payment of any such amount unacceptable.

Anticipating this reaction, we believe our fallback position should ask for full compensation of principal -- the $7,494,900 of U.S. damage estimate. L/C advises that we have settled many international claims for considerably less than 100% of principal, but a particularly apt precedent in this case may be the 1978 settlement by Egypt for the full $10 million principal involved in Nasser - era nationalization claims. A late agreement with Egypt also provided for compensation by payment of full compensation for USG and other claims [illegible] $5.4 million.

The GOI will presumably try to attack the basis for the Navy's damage estimate, and Navy will provide technical experts in this field to participate in the negotiations. Once we have established with the GOI that our damage estimate is sound, we would press ahead for full compensation of this principal amount.

The Egyptian precedent is again useful in that a schedule of payments was agreed to by us, in which the Egyptians are repaying the principal in installments over three years. To get GOI agreement to full compensation on Liberty, it will probably be necessary to offer to establish a similar payment schedule. Here too we could have an opening position, in accordance with the earlier case, of 3 years, with a fallback to 5 years as a concession we could offer.

Should the GOI refuse to agree to compensation for 100% of principal, even with a schedule of repayments, further consultations within the USG will be necessary.

Recommendation:

That you authorize NEA to commence negotiations with the GOI, through the Israeli Embassy, following the strategy outlined above: an opening presentation of approximately $16 million, representing principal plus interest, and a fallback position of $7,494,900, representing 100% of principal. Additionally, that you authorize establishment of a repayment schedule of 3 years, with a fallback position of 5 years.

Approve _____ Disapprove _____

DECLASSIFIED

DECLASSIFIED